Lim Wah Siang v Perwira Affin Bank Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO M-02-18 OF 1995
MAHADEV SHANKAR, ABU MANSOR AND ABDUL MALEK AHMAD JJCA
14 NOVEMBER 1996

Contract *— Guarantee — Guarantor's liability — Attestation of guarantor's signature — Signature of guarantor attested by an undischarged bankrupt — Whether judgment ought to be given against the guarantor*

Bankruptcy *— Capacity of bankrupt — Attestation of signature by undischarged bankrupt — Whether undischarged bankrupt could attest signature on guarantee document — Whether attestation by undischarged bankrupt prohibited by law*

The first defendant failed to satisfactorily service the loan facilities given by the plaintiff. The plaintiff sued and obtained judgment against the first defendant and three other defendants who were the guarantors for the loan. The third defendant appealed. The main ground of appeal was that the plaintiff obtained judgment against the third defendant under O 14 of the Rules of the High Court 1980 in spite of his signatures on the debentures being attested by a director who was an undischarged bankrupt.

Held, dismissing the appeal:

The point taken up by counsel for the third defendant was devoid of any merit since he was unable to point to any provision of the law where the third defendant could not sign in the circumstances he did. No provision of the law was pointed to the court which forbade an undischarged bankrupt from witnessing a signature. In this case, the third defendant did sign and became a guarantor (see p 375I).

[Bahasa Malaysia summary

Defendan pertama gagal membayar faedah ke atas kemudahan pinjaman yang diberikan oleh plaintif dengan memuaskan. Plaintif mendakwa dan memperolehi penghakiman terhadap defendan pertama dan tiga lagi defendan lain yang merupakan penggerenti-penggerenti untuk pinjaman tersebut. Defendan ketiga memfailkan rayuan ini. Alasan rayuan yang utama adalah bahawa plaintif memperolehi penghakiman terhadapnya di bawah A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 walaupun tandatangannya di atas debentur-debentur disaksikan oleh seorang pengarah yang merupakan seorang bankrap.

Diputuskan, menolak rayuan:

Hujah yang ditimbulkan oleh peguam defendan ketiga tidak mempunyai apa-apa merit kerana beliau tidak dapat menunjukkan apa-apa peruntukan undang-undang di mana defendan ketiga tidak boleh menandatangani dalam keadaan di mana beliau telah menandatanganinya. Tidak ada peruntukan undang-undang

ditunjukkan kepada mahkamah yang menghalang seorang bankrap daripada menjadi saksi tandatangan. Dalam kes ini, defendan ketiga telah menandatangani dan menjadi penggerenti (lihat ms 375I).]

Notes

For cases on guarantees, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1679–1693.

For cases on capacity of a bankrupt, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1277–1283.

Legislation referred to

Rules of the High Court 1980 O 14

Appeal from: Civil Suit No 22–85–1992 (High Court, Melaka)

Felix Sennyah (*Bashir & Co*) for the appellant.
Phang Weei Min (*Andrew TS Goh & Co*) for the respondent.

Cur Adv Vult

Abu Mansor JCA (delivering the judgment of the court): This is an appeal against the decision of this court given on 19 August 1996.

The respondent was the plaintiff in the court below ('the plaintiff'). The plaintiff had given the first defendant overdraft and credit facilities for RM80,000 on 6 September 1985 with interest until 25 June 1991. The debt totalled RM1.1m. As consideration for those facilities, the second, third and fourth defendants agreed to be guarantors pursuant to the guarantee agreement dated 14 June 1991.

When the first defendant failed to satisfactorily service the loan facilities, the plaintiff sued and obtained judgment against all the defendants. This appeal has been filed by the third defendant only.

The main ground of complaint by the third defendant was that the plaintiff obtained judgment against him under O 14 of the Rules of the High Court 1980, in spite of his signatures on the debentures dated 14 June 1991 and 25 June 1991 being attested by a director, Ng Sah Tong, who, since 5 December 1990, was an undischarged bankrupt. The learned judicial commissioner gave judgment for the plaintiff in spite of the third defendant's objection.

Before us, the appellant's counsel took the same point. We found the point was devoid of any merit especially since counsel was unable to point to any provision of the law where the third defendant could not sign in the circumstances he did. No provision of the law was pointed to us which forbids an undischarged bankrupt from witnessing a signature. We found the third defendant did sign and became a guarantor. We see no reason why we should disturb the judgment of the learned judicial commissioner and we dismissed the appeal.

Appeal dismissed.

Reported by Jafisah Jaafar